

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 05-0443  
Sales and Withholding Tax  
Responsible Officer  
For the Year 2000**

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**ISSUE**

**I. Sales and Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-2.5-9-3; IC 6-3-4-8, IC 6-8.1-5-1; Indiana Department of Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

**STATEMENT OF FACTS**

Taxpayer was a shareholder and officer for a corporation. Taxpayer passed away in 1997. However, the corporation failed to remit sales and withholding tax for 2000, and the taxpayer was assessed as a responsible officer of the corporation for failure to remit those taxes.

**I. Sales and Withholding Tax-Responsible Officer Liability**

**DISCUSSION**

The proposed sales tax and withholding tax liability was issued under authority of Ind. Code § 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

The proposed withholding taxes were assessed against taxpayer pursuant to Ind. Code § 6-3-4-8. Also of import is Indiana Department of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind.1995), which states “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.”

Finally, the Indiana Department of Revenue’s “notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.” Ind. Code § 6-8.1-5-1(b). That statute also states the burden of proof rests with the taxpayer.

Taxpayer was deceased at the time of the failure to remit. Accordingly, Taxpayer was not an officer or employer of the corporation at the time of the failure to remit.

### **Finding**

The taxpayer’s protest is sustained.

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